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September 24, 2012

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Revision of the Commission's Program Access Rules; MB Docket Nos. 12-68,  
07-18, & 05-192**

Dear Ms. Dortch:

On August 20, 2012, Michael Schooler (Vice President and Deputy General Counsel), and I met separately with Erin McGrath (Legal Advisor to Commissioner McDowell), Dave Grimaldi (Chief of Staff and Legal Advisor to Commissioner Clyburn), and Alex Hoehn-Saric (Policy Director for Commissioner Rosenworcel), and on August 24, 2012, we met with Matthew Barry (Chief of Staff for Commissioner Pai), to discuss the above-captioned proceeding.

During the meetings, we reiterated NCTA's position that the Commission should allow the prohibition on exclusive contracts between cable-owned satellite programming networks and cable operators to sunset.<sup>1</sup> We described the robust and irreversible competition that characterizes today's video marketplace.<sup>2</sup> (See attached handout.) We emphasized that, as the United States Court of Appeals for the D.C. Circuit has recognized, Congress did not intend the exclusivity prohibition in Section 628(c) to last forever or for as long as there was some hypothetical risk of anticompetitive conduct.<sup>3</sup> Because the exclusivity prohibition is no longer "necessary to preserve and protect competition and diversity" in the video marketplace, the Commission should allow it to expire.

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<sup>1</sup> See generally NCTA Comments (filed June 22, 2012); NCTA Reply Comments (filed July 23, 2012).

<sup>2</sup> See NCTA Comments at 3-14; NCTA Reply Comments at 3-7.

<sup>3</sup> See NCTA Comments at 7.

We also reiterated that the exclusivity prohibition should be allowed to sunset *in its entirety*. There is no basis for retaining the prophylactic prohibition against exclusive contracts – whether for all cable-owned networks or for categories of supposedly “must have” programming. The general provisions of Section 628(b) remain available to MVPDs to establish, on a case-by-case basis, that particular conduct is “unfair” and significantly hinders or prevents it from providing satellite cable programming to consumers.<sup>4</sup> Finally, and as explained in NCTA’s comments, we reiterated that First Amendment concerns weigh heavily against any further extension of the exclusivity prohibition.<sup>5</sup>

Respectfully submitted,

/s/ **Rick Chessen**

Rick Chessen

Attachment

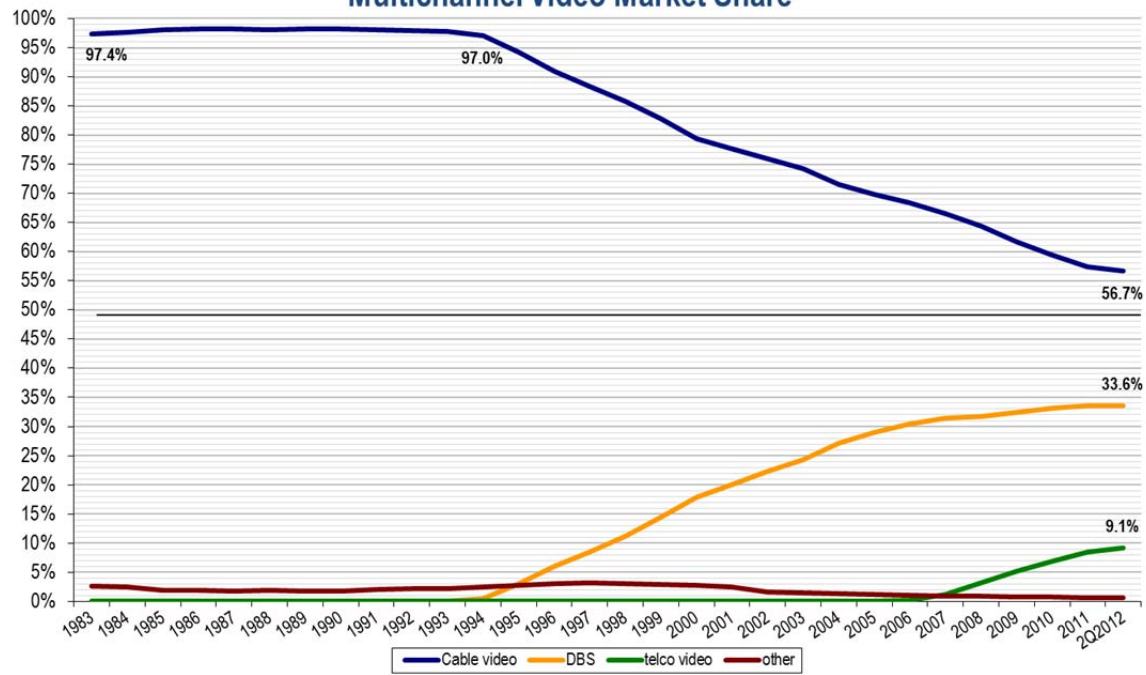
cc: E. McGrath  
D. Grimaldi  
A. Hoehn-Saric  
M. Berry

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<sup>4</sup> See *id.* at 14-17; NCTA Reply Comments at 14.

<sup>5</sup> See NCTA Comments at 17-18.

## Multichannel Video Market Share



## National Basic Cable Programming Networks

